

## **REMARKS/ARGUMENTS**

Applicant respectfully requests that the above application be reconsidered in view of the above amendments and the following remarks.

Claims 1-26 are currently pending. Claims 1, 15, 20 and 26 have been amended to specify that the virtual bundle of items are purchased by the consumer from the second vendor, as described in the specification from page 5, line 29 to page 6, line 14.

No new matter is introduced by the above amendments, and it is requested that they be entered.

### **A. Rejection of Claims 1-9, 15-18, 20-22 and 26 under 35 U.S.C. 103(a) as being obvious over Henson (US 6,167,383) in view of Silva et al. (US 2001/0034658) and in further view of PTO 892 reference U**

Claims 1-9, 15-18, 20-22 and 26 have been rejected under 35 U.S.C. 103(a) as obvious over Henson in view of Silva et al. and in further view of PTO 892 U.

#### **Applicant respectfully traverses this rejection.**

The Henson patent relates to web-based, on-line purchasing of a computer system from Dell. At least a portion of the computer system is physically bundled together prior to being delivered to the consumer. In contrast, in Applicant's invention the consumer creates and purchases at a physical retail establishment a virtual bundle of items that are not physically bundled together. As noted on page 3, lines 20-24 of Applicant's specification, the present invention is designed to remove the excessive expense of conventional special pack programs (see page 1, line 21 to page 2, line 12 of the specification) by allowing consumers to create and purchase at a physical retail establishment, as distinguished from an on-line purchase via the internet, their own "virtually" bundled products. This avoids the need for special packaging and handling of items that are physically bundled together, saves costs associated with the return or scraping of unsold bundled items to the manufacturer, and can increase sales by giving the consumer the option of selecting desired items. Henson does not disclose or suggest such a method in which the consumer purchases at a physical retail establishment a virtual bundle of items that are not physically bundled together, nor a computer system as in Claims 20-25 or a computer readable medium as in Claim 26.

It is acknowledged that Henson does not expressly disclose steps b, e and f of Applicant's Claims 1 and 15. However, it is stated that these steps would have been obvious over the Silva et

al. patent. **Silva relates to a web-based, on-line purchasing system that uses an executable shopping list, which is a bundle created by the affiliate and/or associated merchant, not the consumer as in the present invention.** For example, see the following statements in Silva:

In the Abstract, “ESLs are also applied ...where a merchant can bundle a group of items together ...”

In paragraph 0007, “Thus, when the ESL containing multiple items that the affiliate site has bundled together is selected by the user ...”

In paragraph 0009, “The present invention can also be applied to permission marketing where a merchant may bundle a group of items together ... Thus, a bundle containing multiple individual items that are not offered or available for purchase as a bundle to on-line visitors who directly visit the merchant’s Web site can be produced by a merchant site’s marketing department that employs permission marketing.”

In paragraph 0016, “The multiple items associated with each ESL that are offered for purchase through the affiliate site as a bundle are neither offered nor available for purchase by an on-line user who directly visits (a direct on-line visitor) the merchant’s Web site with his browser. Further, since the bundle can be created directly by the affiliate or under its direction, the individual items that comprise the bundle are selected to create a package that would attract sales by visitors of the affiliate site to the benefit of both the affiliate and merchant sites.”

In paragraph 0020, “An additional advantage with a merchant-side implementation is that the affiliate can offer, with the cooperation of the merchant, discounted bundles in which there is no possibility of the customer cheating by removing items from the loaded shopping cart that make up the discounted bundle.”

In paragraph 0025, “The merchant’s extended CGI script or Web server should then also include code to verify that bundle discounts (if any) are only given to user/customers who purchase the whole bundle.”

**Moreover, in Silva the consumer purchases the bundle from the merchant website, which is the “first vendor” in the terminology of the present invention.** For example, see the following statements in Silva:

In the Abstract, “An executable shopping list (ESL) enables a user ... to order, with a single action, a bundle of multiple items offered for sale by the affiliate’s associated merchant Web site, wherein the bundle is one that is not offered or available for sale as a bundle to on-line visitors who directly access the merchant’s Web site server. By selecting a link on the affiliate’s Web page, the

ESL is executed, thereby automatically loading the bundle of multiple items on that list into a virtual shopping cart at the merchant's Web site on behalf of the user. ... ESLs can be implemented on the affiliate site's side ... to load each item on the list into a shopping cart at the merchant's Web server. Alternatively, ESLs can be implemented on the merchant's site side using the merchant's Web server's infrastructure."

In paragraph 0003, "No matter the method of associating a user/customer's transaction with the affiliate site that directed the user/customer to the merchant site, after the purchase has been completed and the user's credit card has been debited for the amount of the purchase, the merchant site will at some point credit the affiliate site with a percentage of the sale, or some other monetary compensation."

In paragraph 0014, "The smarter affiliate programs that the present invention enables, are even more valuable both to the merchant who ultimately ships the items ordered on-line to the consumer who uses the ordering service."

**In Applicants' invention, the consumer purchases the virtual bundle of items from the second vendor, not the first vendor as in Silva.** In the present invention, the point of sale occurs when the consumer pays the second vendor for the virtual bundle of items. In Silva, the consumer pays via the merchant website, which is the "first vendor".

Finally, Silva also does not disclose a method in which a consumer creates and purchases a virtual bundle of items at a physical retail establishment, as in the present invention. Silva discloses only a web-based, on-line purchasing system that uses a pre-selected executable shopping list.

PTO 892 U discloses a Future Shop retailer that allows shoppers to build and purchase customized computer systems at an Internet-enabled kiosk. However, in this reference, the consumer simply orders a computer system that is later assembled and delivered to the consumer. As with the Henson reference, at least a portion of the computer system is physically bundled together prior to being delivered to the consumer. Clearly, the consumer is not purchasing a virtual bundle of items that are not physically bundled together at a physical retail establishment as in the present invention.

In view of the above, it is submitted that the combination of Henson, Silva and PTO 892 U does not render the claimed invention obvious. Accordingly, withdrawal of the above rejection is requested.

**B. Rejection of Claims 10-14, 19 and 23-25 under 35 U.S.C. 103(a) as being obvious over Henson (US 6,167,383) in view of Silva et al. (US 2001/0034658) in further view of PTO 892 U and further in view of Andrews (US 6,285,986)**

Claims 10-14, 19 and 23-25 have been rejected under 35 U.S.C. 103(a) as obvious over Henson in view of Silva et al. and PTO 892 U, and further in view of Andrews.

**Applicant respectfully traverses this rejection.**

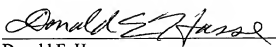
For the reasons explained above, the claimed invention would not have been obvious over Henson in view of Silva and PTO 892 U. Andrews does not disclose or suggest allowing the consumer to create and purchase at a physical retail establishment a virtual bundle of items that are not physically bundled together. Andrews thus does not suggest modifying the other references in any way to provide Applicant's invention. Accordingly, withdrawal of the above rejection is requested.

**C. Conclusion**

It is believed that the above represents a complete response to the Examiner's rejections and places the application in condition for allowance. Reconsideration and allowance of Claims 1-26 is respectfully requested.

Applicant would appreciate a telephone call should the Examiner have any questions or comments with respect to this response.

Respectfully submitted,

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